California Department of Transportation Federal Highway Administration Disadvantaged Business Enterprise Goal and Methodology Federal Fiscal Year 2007

Executive Summary

The California Department of Transportation (Department) is proposing a 10.5 percent overall race-neutral goal for its Federal Highway Administration (FHWA) Disadvantaged Business Enterprise (DBE) for Federal Fiscal Year (FFY) 2007.

FFY 2007 Goal and Methodology

The Department's methodology in reaching the DBE goal for FFY 2007 considers the 2006 contract awards, the number of firms in California, the businesses certified as DBEs, participation by DBEs in 2006, and projected expenditures for 2007. The goal was based on the following methodology as prescribed in 49 Code of Federal Regulations (CFR) Part 26.45:

- 1. The total dollar amount of federal-aid highway construction and construction trade related contracts awarded within the State of California for the past FFY 2006, which is comprised of Federal appropriations to the Department and Local Agencies (Tables B1 and B2).
- 2. The Department is using the U.S. Census Bureau's 2004 California County Business Patterns (CBP) to establish the base figure for this goal methodology. The U.S. Census Bureau, California 2004 CBP, issued in June 2006, is an annual series that provides subnational economic data by industry. Beginning in 1998, the data from the CBP series was published primarily on the basis of the North American Industry Classification System (NAICS) to determine size standards in conformance with 13 CFR 1. Previously, the CBP data was published according to the Standard Industrial Classification (SIC) system. The CBP data is the most accurate information that is available to establish the base figure at this time. In developing this methodology, special consideration was given to the unique nature of highway construction in California.

Step 1 - Deriving the Base Figure

The Department elected to use the Census Bureau Data 2004 for the following NAICS codes (reflecting the total number of establishments per code):

NAICS 236	Building, Developing, and C	General Contracting	23,546
NAICS 237	Heavy Construction		4,033
NAICS 238	Special Trade Contractors		44,183
NAICS 541	Professional, Scientific, and	Technical Services	104,260
		Total	176, 022

"Establishments" are defined by the Census Bureau as a single physical location at which business is conducted or services or industrial operations are performed. When two or more activities are carried on at a single location under a single ownership, all activities are generally grouped together as a single establishment. The entire establishment is classified on the basis of its major activity and all data is included in that classification. The Department determined that the Census Bureau data included many types of work not used in highway construction. Adjustments to the data were made as shown in attachment A.

The Department determined that the NAICS codes 236, 237, 238, and 541 are comparable to SIC Codes 15, 16, 17 and 87. Proportionate adjustments are made to NAICS codes. The table below reflects the totals for these adjustments.

SIC Codes	CBP#	Adjusted #	NAICS	2004 CBP	Adjusted #
	Firms	SIC	Codes	# Firms	NAICS
		Code Firms			Code Firms
SIC 15	16,563	1,656	NAICS 236	23,546	2354
SIC 16	2,698	1,403	NAICS 237	4,033	2097
SIC 17	52,742	9,512	NAICS 238	44,183	7,968
SIC 87	61,279	10,129	NAICS 541	104,260	17,233
Totals	133,282	22,700		176,022	29,652

The identified DBE firms reflected in Table A, by NAICS code, were drawn from the California Unified Certification Program (CUCP) database. The CUCP is charged with the responsibility of certifying firms, and compiling and maintaining the database of certified DBEs for U.S. Department of Transportation grantees in California pursuant to 49 CFR 26. The database is intended to expand the use of DBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all grantees of California. The

CUCP database was cross-referenced to the Work Category codes and to the NAICS codes.

The Department considered, but did not use, the following data sources to supplement the CUCP database:

- The Department of General Services (DGS) database of certified small businesses is not comparable to the DBE data since DGS does not follow the requirements of 49 CFR 26 in its certification of small businesses. DGS uses one business size standard for all industries and does not factor the Personal Net Worth of \$750,000. Additionally, the DGS program is a race-neutral program and does not distinguish whether or not a firm is socially and economically disadvantaged.
- The United States Small Business Administration (SBA) data identified on the SBA's website does not distinguish between DBEs and other small business classifications.
- On April 7, 2005, the Department launched its construction bidders list survey on its website at www2.dot.ca.gov/hq/esc/oe/bidder-survey. The purpose of a bidders list, per 49 CFR 49 26, is to provide the recipient with accurate data about the universe of DBEs and non-DBE contractors and subcontractors who seek to work on the recipient's Federally assisted contracts. This helps recipients set their overall goals. As of September 2006, only 391 firms were registered on the bidder's list, of which only 57 were identified as DBEs. Due to insufficient data gathered on the bidder's list, the Department decided not to use the data compiled from the survey.

Additional information to derive the base figure includes:

- Dollar expenditures were identified by key NAICS codes for the Department for FFY 2006 (see Tables B1 and B2).
- To determine the percentage of the total dollar participation by NAICS code for the Department and the Local Agencies, the total dollar value of the NAICS code was divided by the cumulative total dollar value of all the codes (see Tables C1 and C2).

- The Department estimates receiving approximately \$2.942 billion in federalaid highway program funding for FFY 2007, which includes obligation authority, minimum guarantee, and demonstration dollars. The Department anticipates that \$1,717,000,000 will be allocated to capital project delivery, with the remaining \$1,225,000,000 allocated to local agencies.
- To determine the projected expenditures for FFY 2007, the Department multiplied the projected allocation, as represented in Table B1 and B2, by the percentage of NAICS codes represented in Tables C1 and C2 (calculations shown in Tables D1 and D2).
- To determine the first step for the base figure, the number of available CUCP certified DBE firms were divided by the number of available firms in California, as provided by the CBP calculation (see Table F). Based on the above analysis, the Department calculated a total weighted Base Figure goal of 10.5 percent for FFY 2007.

Step 2 – Adjustments to the Base Figure

The Department considered, but did not use, the following evidence to adjust the base figure in order to arrive at its overall goal.

Available Disparity Studies:

The Department reviewed the California disparity studies listed on the United States Department of Transportation website and determined that the studies were not specific to the highway construction industry, and the local/regional data obtained was not comparable to the State's market, which the Department has identified as the entire State of California. Furthermore, with all disparity studies within California conducted in the late 80's and early 90's, prior to the passage of Proposition 209 in 1996 and the 1999 CFR Final Rule, the Department concluded that the statistical evidence and marketplace conditions existent at the time these studies were conducted, are no longer valid.

The Department contacted local agencies to determine if any disparity reports may have been completed for their regions. Alameda County completed an Availability Study in October 2004.

The County of Alameda Availability Study addresses County contracts awarded during July 1, 2000, to June 30, 2003, and was restricted to the examination of contract awards of \$500,000 and under for construction, architecture and

engineering, professional services, and goods and services. The Department elected not to adjust the overall goal base figure based on this disparity study, for the following reasons:

- The study is limited to the Alameda County market, of which, according to the 2002 Census Data available, both, the total number of business establishments and total population represent only 4 percent of the totals statewide, are not statistically representative for the State of California.
- The study examined contracting opportunities of minority and women-owned businesses and local small businesses, in general.
- Construction contract awards under \$500,000 represented 96.68 percent of the total number of contracts for the county.

Based on the findings of the Availability Study, any adjustments made in the calculations for contracts under \$500,000 would not be significant to warrant an adjustment of the overall goal base figure for the Department.

The Department and the State of California have not conducted any studies to determine whether disparities exist in the ability of DBEs to obtain financing, bonding, and insurance required in performing their services. Additionally, as noted in Attachment A, the Department was unable to identify employment, self-employment, education, training, and union apprenticeship programs data relevant to the opportunities for DBEs to perform on the Department's contracts, because studies that would be applicable to this type of adjustment were not available.

Overall DBE Goal for FFY 2007

The Department has established an overall statewide DBE goal for FFY 2007 of 10.5 percent. The Department proposes to achieve the 10.5 percent DBE goal by wholly race-neutral measures.

In addition, on December 21, 2005, the FHWA provided guidance to State Transportation Agencies (STA) within the Ninth Circuit Court of Appeal jurisdiction to submit and describe the evidence of discrimination or its effects that support the STA's continued use of DBE contract goals. On May 1, 2006, in response to the decision and guidance of the Ninth Circuit Court of Appeal, the Department amended the program to operate a wholly race-neutral DBE Program.

Disparity Study

As a result of the Ninth Circuit Court of Appeal decision and the FHWA guidance letter, the Department initiated a 45-day Public Notice and Comment period on December 21, 2005, to invite maximum public participation, solicit comments, gather evidence, and invite the submission of statistical and/or anecdotal evidence that may support the use of mixed components of a race-conscious and race-neutral measures to achieve the overall DBE goal. This initial comment period included hosting thirteen well-publicized Public Forums statewide where interested parties could testify for the record, as well as submit written evidence.

After thorough examination and evaluation of the comments and evidence received, the Department, with FHWA's concurrence, determined it was unable to continue with any level of a race conscious DBE Program without evidentiary standards. The Department was then required to implement a DBE Program through race-neutral measures until such time we receive the results of the Disparity Study.

The Department contracted with BBC Research and Consulting to conduct a disparity study to identify and define the existence and scope of discrimination in California's transportation contracting industry. The results of the disparity study will help the Department determine what percent of California's statewide DBE goal may be obtained by the use of race-conscious measures, such as individual contract goals. We anticipate the Study's completion by July 2007. The Study phases are:

- Conduct Survey
- Conduct Availability Analysis
- Collect Anecdotal Evidence
- Analyze Data
- Complete Disparity Study

The Department will also be consulting with minorities, women's and general contractor groups, community organizations, and other organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs in the California transportation contracting industry.

Public Participation

The Department plans to begin its public participation in consultation with the Small Business Council that represents approximately 34 statewide DBE organizations. See Attachment B for the current Small Business Council membership roster.

Additionally, to ensure broad public participation the Department will consult with the Southern California Contractors Association, Engineering & Utility Contractors Association, Associated General Contractors, and the Consulting Engineers Land Surveyors of California. The proposed DBE goal will be posted on the Department's, Civil Rights website at http://www.dot.ca.gov/hq/bep/.

In addition, the Department will publish a public notice in these publications:

Los Angeles Times	San Francisco Chronicle	Sacramento Bee
La Opinion	Small Business Exchange	Bakersfield News Observer
Del Norte Triplicate	Modesto Bee	Redding Record Searchlight
Fresno Bee	El Mensajero	Sacramento Business Journal
Miniondas	Black Voice	Sacramento Observer
San Diego Union Tribune	Ming Pao Daily News	

ATTACHMENTS

Table A -	Disadvantaged Business Enterprise (DBE) per North American Industry Classification System
	(NAICS)

Tables B1, B2 - Actual Dollar Expenditures by NAICS for Federal Fiscal Year (FFY) 2006 for the California Department of Transportation and Local Agencies

Tables C1, C2 - Percentage of Participation by NAICS Code

Tables D, D1, D2 - Projected Dollar Distribution between Department and Local Agencies

Table E - Total Weighted Goal Calculation

Tables B1, B2

Actual Dollar Expenditures by NAICS for FFYs 2006

Table B1, Department of Transportation

NAICS Code	Dollar Value (2006)
236 - Building, Developing, and General Contracting	\$5,879,326
237 - Heavy Construction	\$1,665,371,944
238 - Special Trade Contractors	\$216,587,743
541 - Professional, Scientific, and Technical Services	\$212.460.000
Total	\$312,460,000 \$2,200,299,013

Table B2, Local Agencies

NAICS Code	Dollar Value (2006)
237 - Heavy Construction	\$560,530,379
238 - Special Trade Contractors	\$183,897,376
541 - Professional, Scientific, and Technical Services	\$123,596,641
Total	\$868,024,396

Tables C1, C2

Percentage of Participation by NAICS Code

Table C1, Department of Transportation

Individual NAICS Code	Code \$ Value Divided by Cumulative (2006)	Percentage (2006)
236 - Building, Developing, and General Contracting	\$5,879,326 ÷ 2,200,299,013	.0027
237 - Heavy Construction	\$1,665,371,944 ÷ 2,200,299,013	.7569
238 - Special Trade Contractors	\$216,587,743 ÷ 2,200,299,013	.0984
541 - Professional, Scientific, and Technical Services	\$312,460,000 ÷ 2,200,299,013	.1420
Total		1.00=100%

Table C2, Local Agencies

Individual NAICS Code	Code \$ Value Divided by Cumulative (2006)	Percentage (2006)
237 - Heavy Construction	\$560,530,379 ÷ \$868,024,396	.6458
238 - Special Trade Contractors	\$183,897,376 ÷ \$868,024,396	.2119
541 - Professional, Scientific, and Technical Services	\$123,596,641 ÷ \$868,024,396	.1424
Total		1.00=100%

Tables D, D1, D2, Projected Dollar Distribution between Department and Local Agencies

Table D, Projected Percentage of Dollars Awarded by Program FFY 2007

Program	Projected Awards for FFY 2007	Percent
Department	$$1,717,000,000 \div 2,942,000,000 = .5836$.5836 = 58%
Local Agencies	$$1,225,000,000 \div 2,942,000,000 = .4163$.4163 = 42%
Total		1.00=100%

In projecting the FFY 2007 expenditures, the Department assumed that the split between the Department and Local Agencies remains constant, at 58 percent or \$1.717 billion for the Department, and 42 percent or \$1.225 billion for Local Agencies.

Table D1, Department of Transportation Projected Expenditures FFY 2007

NAICS Code	NAICS Code	FFY 2007 Projected Expenditures by	
	Percent	NAICS Code	
236 - Building, Developing, and General Contracting	.0027	$1,717,000,000 \times .0027 = 4,635,900$	
237 - Heavy Construction	.7569	$1,717,000,000 \times .7569 = 1,299,597,300$	
238 - Special Trade Contractors	.0984	\$1,717,000,000 x .0984 =\$168,952,800	
541 - Professional, Scientific, and Technical Services	.1420	$1,717,000,000 \times .1420 = 243,814,000$	

Table D2, Local Agencies Projected Expenditures FFY 2007

NAICS Code	NAICS Code Percent	FFY 2007 Projected Expenditures by NAICS Code	
237 - Heavy Construction	.6458	$1,225,000,000 \times .6458 = 791,105,000$	
238 - Special Trade Contractors	.2119	$1,225,000,000 \times .2119 = 259,577,500$	
541 - Professional, Scientific, and Technical Services	.1424	$1,225,000,000 \times .1424 = 174,440,000$	

Table E

Total Weighted Goal Calculation

NAICS Code	Number of DBEs ÷ County Business Pattern's Adjusted Number of Establishments	DBEs' Weighted Relative Availability by NAICS Code and Program (DBE ÷ CBP) × NAICS Weigh Factor × % of Dollars	Total
236 (Department)	83 / 2,354 = .0353	.0353 x .0027 x .58	.0001
237 (Department)	250 / 2,097 = .1192	.1192 x .7569 x .58	.0523
237 (Local Agencies)	250 / 2,097 = .1192	.1192 x .6458 x .42	.0323
238 (Department)	312 / 7,968 = .0392	.0392 x .0984 x .58	.0022
238 (Local Agencies)	312 / 7,968 = .0392	.0392 x .2119 x .42	.0035
541 (Department)	1,711 / 17,233 = .0993	.0993 x .1420 x .58	.0082
541 (Local Agencies)	1,711 / 17,233 = .0993	.0993 x .1424 x .42	.0059
Total			.1045 = 10.5%

California Department of Transportation Disadvantaged Business Enterprise Overall Goal and Methodology

Step 1 Deriving the Base Figure

The California Department of Transportation (Department) used the Department's Disadvantaged Business Enterprises (DBEs) database (July 2002 Master File) to determine the number of DBEs with highway related Small Business Administration (SBA) Standard Industrial Classification (SIC) Codes 15, 16, 17, and 87. It was assumed that all of these firms were ready, willing, and able to participate on federally assisted contracts.

The Department used the Census Bureau's County Business Pattern (CBP) to determine the number of ALL businesses having work codes comparable to the SBA SIC identified in the previous paragraph. There were 22,700 CBP firms identified (see Table C of Attachment A) using the following assumptions:

• SIC Code 1500 (General Building Contractors):

The CBP included 16,563 establishments in this category. This SIC Code includes a broad range of work not advertised by the Department, such as Mobile Home Repair, Custom Single Family Housing, Modular Housing, Prefabricated Single Family Housing, Townhouse (Single Family) Construction, etc. Based on historical data involving the value of projects and the number of projects performed on a yearly basis in this SIC Code, we determined that 10 percent of all Federal-aid projects fall within this category. Therefore, the number of firms ready, willing, and able to perform highway-related work within SIC Code 1500 (10 percent of 16,563) equals 1,656 firms.

• <u>SIC Code 1600</u> (Heavy Construction Contractors):

The CBP included 877 firms in SIC Code 1610, and 1,821 firms in SIC Code 1620. A review of the SIC Code and subcategory descriptions revealed the possibility of overlapping, which would allow contractors to be counted in both categories. In addition, the Department's work in some of these categories; e.g., airport runways or tunnel construction, is limited. To ensure a representative number, we determined the total number of contracts awarded from June 1988 through July 1999 to be 3,818. The majority of contracts advertised by the Department specify that an A (General Engineering) license can perform the work. We found that the number of projects awarded that required an A license was 1,983 or 52 percent of the total projects (1,983/3,818 = 52 percent). We totaled the number of firms in SIC Codes 1610 and 1620 (2,698) and multiplied it by 52 percent for a representative total of 1,403 firms for SIC Code 1600.

California Department of Transportation Disadvantaged Business Enterprise Overall Goal and Methodology

• <u>SIC Code 1700</u> (Special Trade Contractors):

The CBP included a total of 52,742 firms in this category. The number of firms included several types of contractors who were unlikely to perform work on the Department's projects. For example, any California firm which performs contracting work in excess of \$300 must be licensed. The license category is the same for all painting firms (C-33) and all electrical firms (C-10). These categories are extremely broad and do not distinguish between firms performing residential, commercial and highway work. This is evidenced in the case of aggregate numbers in the CBP for SIC Codes 1720 and 1730. The CBP figures did not distinguish between firms that paint houses/buildings, either individually or commercially, or provide painting services; e.g., structural steel painting, on the Department's projects. Similarly, in looking at the electrical category, the CBP did not distinguish between residential-type electrical work from doing inductive loop detectors. luminaries, highway lighting, etc., performed on Department projects. The Department, not having quantifiable data, determined that the complexity and scheduling issues that go into the highway painting and highway electrical work warranted a lowered expectation of firms in these categories. The Department decided on 30 percent of the 4,334 for SIC Code 1720, determining that the higher dollar value in contracts awarded is in painting of structural steel (bridges). This is highly specialized; however, there were also opportunities for the few building projects; i.e., roadside rest areas, toll booths, etc., that the Department awards. For SIC Code 1730, we took 10 percent of the 6,143, determining that highway electrical work had more specialized requirements than residential or commercial building electrical work. Because of the overlapping descriptions of the categories included, there was a significant possibility that firms were being counted twice; e.g., SIC Code 1750 (Carpentry and Floor Work) showing 3,928 establishments and SIC Code 1751 (Carpentry Work) showing 2,343 establishments, as well as SIC Code 1740 (Masonry, Stonework and Plastering) showing 5,178, and SIC Code 1742 (Plastering, Drywall and Mosaic) showing 2,638 establishments. Table A of Attachment A explains the reasoning used to include only 9,512 of the firms identified in SIC Code 1700.

TABLE A

SIC Code	SIC Description	Total CBP Firms	Firms Counted	Reason for Adjustment	
1710	Plumbing, Heating, Air Conditioning	6,806	0	Negligible utilization	
1720	Painting and Paper Hanging	4,334	1,300	Took 30% of the 4,334, see SIC Code 1700 above	
1730	Electrical Work	6,143	614	Took 10% of the 6,143, see SIC Code 1700 above	
1740	Masonry, Stonework, and Plastering	5,178	0	Counted the firms in SIC Code 1741	
1741	Masonry and other Stonework	1,316	1,316		
1742	Plastering, Drywall, and Mosaic	2,638	0	Counted type of work in SIC Code 1741	
1743	Terrazzo, Tile, Marble, Mosaic Work	1,175	0	Counted type of work in SIC Code 1741	
1750	Carpentry and Floor Work	3,928	0	Counted type of work in SIC Code 1751	
1751	Carpentry Work	2,343	2,343		
1752	Floor Laying and Floor Work, Nec	1,472	0	Counted type of work in SIC Code 1751	
1760	Roofing, Siding, and Sheet Metal Work	3,038	0	Negligible utilization	
1770	Concrete Work	2,533	2,533		
1780	Water Well Drilling	221	0	Negligible utilization	
1790	Misc Special Trade Contractors	5,890	0	Previously included	
1791	Structural Steel Erection	425	425		
1793	Glass and Glazing Work	633	0	Negligible utilization	
1794	Excavation Work	862	862		
1795	Wrecking and Demolition Work	119	119		
1796	Installing Building Equipment Nec	285	0	Previously included	
1799	Special Trade Contractors Nec	3,356	0	Previously included	
179\	Administrative and Auxiliary	47	0	Previously included	
	Total CBP Firms	52,742	9,512		

• SIC Code 8700 (Services):

The CBP included a total of 61,279 firms in this category and reflected a number of categories of work that were not applicable to the type of work performed on the Department's projects. Table B of Attachment A explains the reasoning for including only 10,129 firms from SIC Code 8700.

California Department of Transportation Disadvantaged Business Enterprise Overall Goal and Methodology

TABLE B

SIC Code	SIC Description	Total CBP Firms	Firms Counted	Reason for Adjustment
8710	Engineering and Architectural Services	10,330	0	Counted in SIC Code 8711 and 8712
8711	Engineering Services	6,948	6,948	
8712	Architectural Services	2,682	2,682	
8713	Surveying Services	499	499	
8720	Accounting, Auditing, and Bookkeeping	11,034	0	Not applicable to the Department's projects
8730	Research and Testing Services	3,081	0	Not applicable to the Department's projects
8731	Commercial Physical Research	1,406	0	Not applicable to the Department's projects
8732	Commercial Nonphysical Research	668	0	Not applicable to the Department's projects
8733	Noncommercial Research Organizations	348	0	Not applicable to the Department's projects
8734	Testing Laboratories	618	0	Not applicable to the Department's projects
8740	Management and Public Relations	11,887	0	Not applicable to the Department's projects
8741	Management Services	3,113	0	Not applicable to the Department's projects
8742	Management Consulting Services	4,937	0	Not applicable to the Department's projects
8743	Public Relations Services	1,028	0	Not applicable to the Department's projects
8744	Facilities Support Services	167	0	Not applicable to the Department's projects
8748	Business Consulting Nec	2,530	0	Not applicable to the Department's projects
	Total CBP Firms	61,279	10,129	

California Department of Transportation Disadvantaged Business Enterprise Overall Goal and Methodology

TABLE C

SIC Code	CBP Firms Available		
SIC 15	1,656		
SIC 16	1,403		
SIC 17	9,512		
SIC 87	10,129		
TOTAL	22,700		

Table C represents all businesses available to participate in Federally assisted contracts according to SIC Code and the CBP.

PRIMARY	PHONE	ALTERNATE	PHONE	
NAME	FAX/E-MAIL	NAME	FAX/E-MAIL	COMMITTEE
Small Business Council Chair	Telephone: (916) 324-0990			
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Business Transportation & Housing	Telephone:(916) 324-7516			
Sam Wallace	FAX: (916) 327-0051			
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Surveyors of California (CELSOC)	FAX: (707) 255-5021	Land Surveyors of	Ext. 101	
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Pasadena, CA 91108				CONTRACTOR
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Asian Business Association (ABA) PRIMARY Johnathan Hou Asian Business Association	Telephone: (714) 247-1002 FAX: (714) 247-1006 E-Mail: axiomes@earthlink.net			PROFESSIONAL
1322 Bell Avenue, Suite 1G Tustin, CA 92780	axiones e caraminismes			
Southern California Native American Tribes Jeffrey Lee "Jackson" American Indian Apprenticeship Initiative 8 Elm Avenue Imperial Beach, CA 91932	Telephone: (619) 423-6610 FAX: (619) 839-3858 E-Mail: grassdancer@earthlink.net			COMMODITIES
San Francisco Black Chamber of	Telephone: (510) 763-2400	Five County East Bay Black	Telephone: (510) 531-0772	PROFESSIONAL
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3

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5

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